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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/020,342 | 12/12/2001 | Garry D. Friesen | P05453US0 | 8992 |
| 22885 | 7590 | 12/01/2003 | EXAMINER | |
| MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721 | | | KEENAN, JAMES W | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3652 | |

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|-------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/020,342 | FRIESEN, GARRY D. |
| Examiner | Art Unit | |
| James Keenan | 3652 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 September 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 12-15, 17-19 and 26-28 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10, 12-15, 17-19 and 26-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 December 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-2 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth (previously cited) in view of Fitch (US 1,675,701).

Roth shows a trailer for bulk seed containers including wheeled bed 12, hopper 64, conveyor 60, and guide plates 52 which extend upwardly from the bed. Although the containers are not disclosed as having a flange, it is noted that the container structure is not a positively claimed limitation. Since the trailer could be used, without modification, for flanged containers, it is considered to meet this claim limitation.

Roth does not, however, show the guide plates to incline outwardly from the bed.

Fitch shows a load bed of a vehicle wherein guide plates 20-21 have inner surfaces which incline upwardly and outwardly from the bed to enable a load to be "readily centered as it is put into position" on the bed (page 1, line 90).

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Roth by utilizing guide plates which inclined outwardly, as shown by Fitch, as this would make loading easier by compensating for some misalignment as the load is lowered onto the bed.

Re claim 26, although the guide plates as modified do not have an upper edge that extends beyond the bed perimeter, it would have merely been a further design expediency to have so constructed the plates to compensate for even greater loading misalignment and/or misshapen containers.

3. Claims 1-2, 8, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kruse (previously cited by applicant) in view of Fitch.

Kruse shows a transporter for bulk seed boxes including bed 30, hopper 44, conveyor 48, and guide plates 64. Although the transporter is towed behind a tractor, it is not a wheeled trailer. Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Kruse by adding wheels thereto so as to create a trailer vehicle, as this would offer greater flexibility and support. Like Roth, Kruse also does not show the guide plates to incline outwardly from the bed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Kruse by utilizing guide plates which inclined outwardly, as shown by Fitch, as this would make loading easier by compensating for some misalignment as the load is lowered onto the bed.

Re claim 8, the box rather than the hopper includes a gate. However, Kruse acknowledges that other types of gates may be used. Therefore, it would have been obvious to have utilized a gate on the hopper, as this would simply be an alternate equivalent design expediency. The further inclusion of a control arm connected to the gate is considered a further expediency.

4. Claims 10, 12-13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Titcombe (both previously cited).

Ehlers shows a vehicle for bulk seed boxes including bed 20, an elongated enclosure for receiving seed, i.e., a hopper (see col. 2, lines 23-28), conveyor 45, and lock bars 25, 25', and 40 which overlap and engage a flange on the boxes to secure them to the bed. The bed is permanently attached to a truck rather than being a separate trailer. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by disposing the seed handling equipment on a wheeled trailer to be towed behind the truck, as this would enable the truck to be used for other work when not being used for seed handling.

Ehlers does not show the lock bars to be pivotally mounted, although the rear bar 40 is movably mounted. Titcombe shows pivotally mounted bars for lockingly engaging a flange of a container on a trailer as it is being pulled across a field. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by pivotally mounting the lock bars for movement between locking and unlocking positions, as shown by Titcombe, as this would accord a more convenient means of securing the boxes on the vehicle.

Although applicant argues that such a modification would not meet the newly recited limitation that the unlocked position of the lock bars is spaced outwardly from the bed perimeter, this is not persuasive. Although Titcombe may show both the locked and unlocked positions within the bed perimeter, this is simply because the load does not extend to the bed perimeter. In the Ehlers device, the load extends to the bed perimeter. Thus, the pivoting lock bars of Titcombe, when added to the Ehlers apparatus, would necessarily be placed at the bed perimeter and the unlocked position would logically

then be outside this perimeter; otherwise, loading would be difficult if not impossible. Applicant further argues that the combination set forth fails to show that including the pivoting lock bars of Titcombe would be a more convenient means of securing boxes. While it is true that Titcombe may require manual actuation, it is still believed to be substantially simpler (and thus more convenient) than the lock bar and rod of Ehlers which requires two separate steps to actuate. Furthermore, the issue of convenience is a moot point anyway; a modification to a reference does not necessarily have to result in an improvement thereof if it is simply an art recognized design equivalent. If applicant persists in asserting that the pivotal lock bars of Titcombe are not more convenient than that of Ehlers, then the examiner believes that at the very least they qualify as obvious design equivalents.

Re claim 13, it would have been a mere design expediency for the lock bars to extend along opposite sides of the boxes; note in particular the rear lock bar 40.

Re claim 18, the use of a gate on the hopper and corresponding control arm is considered an obvious design expediency.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Fitch, as applied to claims 1-2 above, and further in view of Ehlers.

The modified Roth apparatus does not show lock bars for engaging flanges on the boxes. It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified Roth by adding lock bars to engage flanges on

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the boxes, as shown by Ehlers, as this would provide a more secure engagement of the boxes for travel over rough terrain.

6. Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Fitch and Ehlers, as applied to claim 3 above, and further in view of Titcombe.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have yet further modified the apparatus of Roth by utilizing the pivoting lock bars of Titcombe for the same reason given in paragraph 4 above.

7. Claims 14-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Titcombe, as applied to claim 10 above, and further in view of Roth.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Ehlers by adding guide plates to align the boxes on the bed, as shown by Roth, as this would improve and simplify the loading of boxes.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Fitch, as applied to claim 1 above, and further in view of Grieshop and Carlson et al (both previously cited).

Roth does not show the auger to comprise first and second sections pivotally connected together with a gas cylinder to facilitate movement of the second section between transport and discharge positions. Grieshop shows a similar unloading auger which comprises first and second sections pivotally connected together and a fluid cylinder (presumably hydraulic) to move the second section between transport and use positions. Carlson et al show a folding auger movable between transport and use positions with the assistance of a gas spring. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Roth by constructing the auger with first and second sections pivotally connected together, as shown by Grieshop, as this would provide more a compact vehicle when not in use, and to have utilized a gas spring rather than a fluid cylinder to move the second section between the use and storage positions, as suggested by Carlson et al, as this would be much less costly and complex than a hydraulic system.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Titcombe, as applied to claim 10 above, and further in view of Grieshop and Carlson et al.

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It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers with a folding auger and gas spring arrangement, as suggested by the combined teachings of Grieshop and Carlson et al, for the same reasons given above in paragraph 8.

10. Applicant's arguments with respect to claims 1-9 and 26-28 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments filed 9/23/03 have been fully considered but they are not persuasive. Applicant's arguments regarding claims 10, 12-15, and 17-19 have been addressed in paragraph 4 above.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

James Keenan
James Keenan
Primary Examiner
Art Unit 3652

jwk
11/20/03